

DELTA ELECTRICITY

ABN 67 139 819 642

AND

LITHGOW CITY COUNCIL

ABN 59 986 092 492

DEED OF AGREEMENT

LAND EXCHANGE

Le Fevre & Co.,
Solicitors
108 Main Street,
Lithgow NSW 2790
Tel: (02) 63 522 699
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DEED

Date 9th May, 2013

PARTIES

Name: Delta Electricity ABN 67 139 819 642 ("Delta")

Address: Level 20, 175 Liverpool Street, Sydney NSW 2000.

Fax Number: 02 63 54 8113

Contact: Michelle Blackley – Commercial Manager/Scott Willis – Commercial Team Leader.

Name: Lithgow City Council ABN 59 986 092 492 ("Council")

Address: Council Chambers, 180 Mort Street, Lithgow NSW 2790.

Fax Number: 02 63 51 4259

Contact: Roger Bailey – General Manager.

BACKGROUND

- A.** Delta is the Registered Proprietor of land comprising Lot 3 DP261232 and Lot 3 DP717025 (collectively "the Delta Lots").
- B.** Council is the Registered Proprietor of Lot 3 DP634322 and Lot 3 DP634323 (collectively "the Council Lots").
- C.** Roads have been constructed upon the Delta Lots (respectively Magpie Hollow Road at Lake Lyell and Barton Avenue at Wallerawang) to which the public currently have access notwithstanding there being no legal right of public access thereto.
- D.** The Council Lots are dedicated Public Roads, which have been submerged beneath Lake Lyell and to which the public currently has a legal right of access, but no practical access.

OPERATIVE PART

1. Definitions and Interpretations:

1.1 Definitions

- . In this Deed the following definitions apply unless the context requires otherwise:
 - . **Authority** means any Federal, State or Local Government or authority, body or department having jurisdiction in relation to the Delta Lots, the Council Lots or this Deed.
 - . **Business Day** means any day which is not a Saturday, Sunday or Public Holiday in New South Wales.
 - . **Cost** includes any direct cost, expense, charge, payment, outgoing, loss or other expenditure.
 - . **GST** has the meaning given in the GST Act.
 - . **GST Act** means “A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended and any related legislation.
 - . **Law** includes any requirement of any Rule, Statute, Proclamation, Regulation, Ordinance, or By-law present or future and whether State, Federal or otherwise and the requirements of any authority.
 - . **Deed** means this Deed together with any annexures hereto.

1.2 Interpretations

- . Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:-
 - (a) singular includes the plural and conversely;
 - (b) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

- (c) a reference to legislation or to a provision of legislation includes a modification, reenactment of or substitution for it and a regulation or statutory instrument pursued under it;
- (d) a reference to a party includes a reference to the party's executors, administrators, successors, permitted substitutes (including persons taking by novation) and permitted assigns;
- (e) unless stated otherwise one word or provision does not limit the effect of another;
- (f) a reference to the whole includes part;
- (g) all obligations must be performed duly and punctually;
- (h) words importing "do" include do, permit, omit, or cause to be done or omitted;
- (i) if a party consists of more than one person this Deed binds them jointly and each of them severally;
- (j) where a party is prohibited from acting or omitting to act in a certain way, that party must ensure that each of its employees, agents and contractors complies with such prohibition;
- (k) a reference to "writing" includes a fax, letter, email and any other means of reproducing words in a tangible and visible form;
- (l) a reference to "conduct" includes any omission, statement or undertaking;
- (m) a reference to a "clause" is a reference to a clause of this Deed unless otherwise specified; and
- (n) if a provisional part of this Deed is illegal, invalid or unenforceable then that provision or part is severed from this Deed and this Deed remains otherwise unaffected.

2. **Agreement**

2.1 **Transfer of Delta Lots.**

In consideration of Council agreeing to transfer to Delta the Council Lots Delta will transfer to Council the Delta Lots.

2.2 **Road Dedication.**

Council will dedicate the Delta Lots as Public Road immediately upon completion of the transfer thereof by Delta to Council, and Council will bear all costs associated with the transfer to it of the Delta Lots and the dedication thereof as Public Road, provided however that Delta will bear responsibility for payment of all GST (if any) payable in respect of such transfer.

2.3 **Road Closure.**

Council will forthwith make application for closure of roads in respect of the Council Lots and do all things necessary to procure such closures and shall bear all costs incurred in relation thereto.

2.4 **Transfer of Council Lots.**

In consideration of Delta transferring to Council the Delta Lots, upon completion of the closure of roads aforesaid Council will transfer the Council Lots to Delta, and Delta will bear all costs associated with such transfer provided however that Council will bear responsibility for payment of all GST (if any) payable in respect of such transfer.

2.5 **Costs of Deed.**

Each party will bear its own costs in connection with this Deed and the transactions pursuant hereto except to such an extent as is otherwise provided herein.

2.6 Further Assurance.

Each of the parties hereto shall do all things, execute all documents, and grant such consents as may be necessary to give effect to the provisions of this Deed.

2.7 Timeliness.

Each of the parties shall use all reasonable efforts to effect and complete the transactions and matters referred to herein in a timely and expeditious manner.

2.8 Assignment/Novation/Transfer.

- (i) Delta shall be entitled to assign and/or novate its interest under the Deed without the consent of Council.
- (ii) If Delta transfers title to the Delta Lots, it must use all reasonable endeavours to novate this Deed to the transferee of the Delta Lots (“Transferee”).
- (iii) Delta and Council must do all things reasonably required to ensure that such novation of this Deed is effected, including entering into a Deed of Novation with the transferee.
- (iv) On the novation of this Deed to the transferee, Delta is released from its obligations under this Deed.

2.9 Amendment.

This Deed may only be amended by an Amending Deed executed by both parties.

2.10 Caveats.

Each party may lodge a Caveat against the lands referred to herein to protect its interests under this Deed.

2.11 Entire Agreement.

This Deed contains the entire understanding of the parties with respect to the matters referred to herein. There are no promises, covenants or understandings other than as contained herein.

2.12 Notice.

A Notice under this Deed is duly given if:

- i) sent by fax to the fax number specified in this Deed, on receipt by the sender of the answer back code of the recipient at the end of transmission stating that the transmission was successful;
- ii) delivered in person and left at the address of the recipient specified in this Deed; or
- iii) by post to the address specified in this Deed when received by the recipient;

But, if delivery or receipt is not on a business day, or is later than 5 p.m. (local time) it is duly given on the next business day.

2.13 Waiver

- (a) All the rights and powers of each party under this Deed shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof and neither party shall be deemed to have waived any of its rights or any provision of this deed or any notice given hereunder unless such right or provision or notice is expressly waived by writing under the hand of a responsible officer of such party, and no waiver by one party of any breach by the other of this Deed shall be deemed a waiver of any continuing or recurring breach.
- (b) All rights and remedies conferred upon either party by this Deed shall be cumulative and in addition to every other right or remedy available to such party hereunder or by law.

2.14 Counterparts

This Deed may be executed in counterparts and all counterparts taken together constitute one document.

2.15 Governing Law

This Deed is governed by the law of New South Wales, and each party submits to the non-exclusive jurisdiction of Courts in New South Wales.

EXECUTED AS A DEED

Executed by Delta Electricity)
under Registered Power of Attorney)
Registered Book 4634 No. 434)
and in the presence of:)

.....
Signature of Witness

.....
Name of Witness

The Common Seal of Lithgow)
City Council ABN 59 986 092 492)
was hereunto affixed)
pursuant to a Resolution of Council)

.....
Signature of Authorised Officer

Maree Statham

Name of Authorised Officer

Mayor

Authority of Officer

.....
Signature of Attorney
Greg Everett



.....
Signature of Authorised Officer

Roger William Bailey

Name of Authorised Officer

General Manager

Authority of Officer